

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION

ATHENA LUNDBERG et al.,

Plaintiffs,

v.

ONE THREE FIVE, INC. & ALBERT BORTZ,

Defendants.

Civil Action No. 2:19-cv-692-RJC-CRE

THE UNITED STATES'S RESPONSE TO DEFENDANTS' OBJECTIONS

As described in the federal government's notice of intervention (ECF No. 63), the United States has intervened in this action for the limited purpose of defending the constitutionality of the Lanham Act, which Defendants argue violates the dormant Commerce Clause. In their objections to Chief Magistrate Judge Eddy's Report & Recommendation, Defendants briefly take issue with Judge Eddy's conclusion that federal statutes like the Lanham Act do not implicate the dormant Commerce Clause. *See* ECF No. 66 at 12-13 (R&R); ECF No. 67 at 7-9 (Defs.' Objs.). That cursory discussion fails to identify any legal error that warrants disturbing Judge Eddy's conclusion. As the federal government's intervention brief explains in more detail, the dormant Commerce Clause applies only to *state* statutes unduly interfering with interstate commerce. It does not apply to statutes enacted by Congress, such as the Lanham Act. *See* ECF No. 63 at 4-6. And even if the dormant Commerce Clause could apply, defendants' challenge would still fail because neither the Lanham Act nor the analogous Pennsylvania statute that federal courts in Pennsylvania use to assess time-bar defenses such as laches distinguishes between in-state and out-of-state litigants. So neither unduly interferes with interstate commerce. *See id.* at 6-7. For those reasons, the Court should overrule defendants' objections and adopt the Report & Recommendation's well-reasoned conclusion on the constitutionality of the Lanham Act.

Dated: February 2, 2022

Respectfully submitted,

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/s/ Kevin Wynosky
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CERTIFICATE OF SERVICE

On February 2, 2022, I electronically submitted this document to the clerk of court of the U.S. District Court for the Western District of Pennsylvania using the court's electronic case filing system. I certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin Wynosky

Kevin Wynosky

Trial Attorney

U.S. Department of Justice